

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

40 DAYS FOR LIFE, a nonprofit corporation)
of the State of Texas,)
)
WHITE PLAINS 40 DAYS FOR LIFE, an)
unincorporated association of the State of New)
York,)
)
OKSANA HULINSKI, and REGINA JOY)
CREARY MOLINELLI,) Case No. 7:22-cv-6950-PMH
)
Plaintiffs,)
)
v.)
)
COUNTY OF WESTCHESTER,)
)
Defendant.)

UNSWORN SUPPLEMENTAL DECLARATION OF BRIAN BURKE

Pursuant to 28 U.S.C. § 1746, Brian Burke hereby declares under penalty of perjury as follows:

1. I have personally reviewed the “YouTube video” that Westchester County submitted with its Response to Plaintiffs’ Motion for Preliminary Injunction, which video purports to show pro-life advocacy outside the Planned Parenthood facility in Greenburgh in July 2022 following the passage of Chapter 425. Macleod Decl., ¶4.¹
2. At approximately 0:36 into the video, until approximately 01:36, it depicts a man standing alongside the facility driveway holding a sign and offering a leaflet to a vehicle occupant entering the facility property.

¹ <https://www.youtube.com/watch?v=72apkCZLpVA>.

3. This individual is not me, as I continue to stand back from the driveway to avoid violating any number of Chapter 425's hair-trigger provisions applicable to pro-life sidewalk counseling and leafleting on public streets and sidewalks in the County. (ECF No. 52-17 at ¶7.)

4. I also attest that I personally know this individual; that he accurately admits in the video that he is "technically in violation of" Chapter 425 (Video at 02:05); and that by directly violating Chapter 425, I believe he would be out of compliance with White Plains 40 Days for Life's (WP-40DFL's) policy requiring that participants abide by the law at all time. However, this activity apparently occurred in July 2022, months before the Fall 2022 "Local Vigil" began.

5. The remaining individuals depicted in the video appear to be standing stationary and holding signs, which I understand is not in itself a violation of Chapter 425 and is not the basis of this lawsuit.

6. Moreover, in reviewing the video, I observed that only several individuals are depicted standing safely on the street outside the Greenburgh facility. This is consistent with the significantly reduced attendance that I observed during the 40 Days for Life "Local Vigil" later that fall.

7. Specifically, as I previously mentioned, during the Fall 2022 White Plains 40 Days for Life "Local Vigil," I observed that attendance diminished by about 50% compared to past Local Vigils. (ECF 52-17 at ¶16.) None of the County's photos and video submitted in Response are to the contrary, as indeed they all depict only one, several, or a handful individuals praying or holding signs outside of abortion facilities in the County since the passage of Chapter 425.

8. In contrast, the photos attached to Plaintiffs' Second Amended Complaint (ECF No. 52-2) show a significantly greater number of individuals (sometimes more than 20) standing outside the Greenburgh Planned Parenthood facility prior to the passage of Chapter 425. (ECF No. 52-17.) These photos are an accurate representation of WP-40DFL activity I participated in and

observed prior to the passage of Chapter 425.

9. The significantly reduced attendance demonstrated by Defendant's own photos only confirms the deleterious consequences and chilling effect on WP-40DFL's activities, which include leafletting and sidewalk counseling and not just sign-holding, as a result of Chapter 425.

10. I certify under penalty of perjury that the foregoing is true and correct.

Date: 2/28/2023



Brian Burke